

**INTERLOCAL COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION AND CITY OF AUSTIN
FOR
THE CAPITOL AREA DEVELOPMENT STUDY**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Interlocal Cooperation Contract is made and entered into by and between the City of Austin (the "**City**"), a home rule municipality and political subdivision of the State of Texas, acting by and through its duly authorized City Manager or designee, and the Texas Facilities Commission (the "**Commission**"), an agency of the State of Texas (the "**State**") and organized under the provisions of the Texas Government Code, Chapter 2152, pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code (collectively, the "**Parties**").

WHEREAS, the Commission among other responsibilities is charged with the management and development of certain real property owned by the State and long range strategic facility planning for State agencies' space needs;

WHEREAS, the Commission adopted a Comprehensive Asset Management and Development Strategy including among other objectives to ascertain the feasibility and economic benefits of interim development of the State's underdeveloped and nonperforming real property in Travis County, Texas (the "**Capitol Area Development Strategy**"), which includes among other tasks site specific studies and analyses;

WHEREAS, the Commission initiated the Capitol Area Development Study ("the Study") as part of the Capitol Area Development Strategy and requested the City's participation;

WHEREAS, the City and the Commission are committed to working toward a shared vision for the capitol area that maximizes the taxpayer's investment as memorialized in Resolution No. 20101118-061, as amended by Resolution No. 2012____ and for other Study Areas (as defined in this Contract) within the City of Austin; and

WHEREAS, the Parties desire to coordinate and collaborate on the Study;

NOW, THEREFORE, in consideration of the mutual covenants and promises stated in this Contract, the Parties agree as follows:

I. PURPOSE.

1.01 The Parties will study development feasibility and perform administrative and governmental functions and services as those terms are defined by Sections 791.003(1) and 791.003(3) of the Texas Government Code, and each party represents that it has the authority to plan and provide governmental functions and services as set out in this Contract.

1.02 The Commission has requested the City, and the City has agreed, to coordinate and collaborate with the Commission on the Study as part of the Capitol Area Development Strategy, which shall be prepared in accordance with the Scope of Work attached as Exhibit A and fully incorporated by reference for all purposes. Although the Study may generally track the *1956 Capitol Area Master Plan*, the *1963 Capitol Master Plan and its Development*, the *1979 Development Study for the Capitol Complex*, and the *1981 Human Services Center Master Plan* each having stated purposes and specific recommendations for policies and implementation for the construction needs of State government in the Capitol Area, the Study will also address other State-owned properties that either serve the public or are placeholders for future state government that may be used on an interim basis by the private sector to generate revenue from non-tax sources for the State and provide an otherwise unattainable tax base and other public benefits for the City and other local governments.

1.03 The areas to be studied as contemplated by this Contract are the underdeveloped and nonperforming State-owned properties in Travis County, Texas, as follows (collectively, the "**Study Areas**"):

(a) the Capitol Complex means the State-owned property within the area bounded on the north by Martin Luther King, Jr. Boulevard, bounded on the east by Trinity Street, bounded on the south by 10th Street, and bounded on the west by Lavaca Street;

(b) the North Austin Complex including the North Austin Campus including the DSHS Complex at 1100 W. 49th Street, the Brown Heatly Building at 4900 N. Lamar Blvd., the DARS Administration Building at 4800 N. Lamar Blvd., the John H. Winters Complex at 701 W. 51st Street, and THHS (formerly MHMR Buildings 1 & 2) at 909 W. 45th Street;

(c) the South Campus which includes the Austin State Hospital (ASH) at 4110 Guadalupe Street;

(d) the Bull Creek Annex and Camp Hubbard at Bull Creek Road and West 45th Street;

(e) a to-be-designated parcel out of a portion of Camp Mabry; and

(f) the Hobby Complex and State Parking Garage N.

SECTION II. STATEMENT OF WORK.

2.01 With respect to completion of the Study, the Commission will have the duties and responsibilities as follows:

(a) compile the Study including outsourced tasks from procured professional advisors and professional services;

(b) manage the work in cooperation with the City, including the budget, the schedule, and the contributions of any professional services, consistent with timely completion (collectively, the "**Work**");

(c) provide milestone deliverables no less than quarterly, and more frequently if requested;

(d) provide the completed Study to the City in both hard copy and electronic format; and

(e) in conjunction with its responsibilities, the Commission will conduct outreach to keep state leadership, affected jurisdictions, and stakeholders apprised of the progress of the Work.

2.02 With respect to its contributions to the Study, the City will have the duties and responsibilities as follows:

(a) manage the work in cooperation with the Commission, including the budget, the schedule, and the contributions of any professional services, consistent with timely completion (collectively, the "**Work**");

(b) provide relevant data and information within its possession and control, including regulatory information, Geographic Information Systems (GIS) data, and land use and transportation data;

(c) participate in the development and analysis of Development Scenarios as those terms are defined in Exhibit A;

(d) participate in all progress and review meetings;

(e) review and comment on all interim and final deliverables;

(f) share expertise and experience regarding City public private partnerships and redevelopment projects;

(g) assist with the formulation of economic impact analysis, economic feasibility, and planning initiatives;

(h) communicate the contents of adopted City plans, policies, and land use development codes, including the Imagine Austin Comprehensive Plan, as those documents may impact the areas to be included in the Study;

(i) in conjunction with its responsibilities, the City will conduct public outreach to keep the public apprised of the progress of the Work and solicit public review and comment on key Study deliverables; provided however, draft reports and deliverables are not subject to publication or distribution as provided by Section 552.111, Texas Government Code.;

(i) consider State planning and feasibility efforts in City planning initiatives including, but not limited to, transportation, infrastructure, and economic growth and redevelopment initiatives;

(j) coordinate and facilitate interaction between the City's departments and the Commission; and

(k) present the Study to Council in a public meeting and provide the Study to the public on the City's web site.

2.03 The Parties will assess the benefit and utilization of various financing mechanisms, public funds investment, and tax reinvestment options.

2.04 Communications and management decisions for the parties to this Contract will be by the following project managers or their designees.

Commission: Aundre Dukes, Portfolio Manager
Planning and Real Estate Management Division
Texas Facilities Commission
1711 San Jacinto Boulevard, Room 404B
Austin, Texas 78701

City: Jim Robertson
Planning and Development Review Department
City of Austin
One Texas Center, Fifth Floor
505 Barton Springs Rd
Austin, Texas 78704-1245

SECTION III. PROJECT BUDGET AND THE CITY'S CONTRIBUTION.

3.01 In addition to funding provided by the State, the City's initial monetary contribution for the production of the Study shall not exceed \$200,000 in accordance with Resolution No. 20101118-061 for the Capitol Complex, as amended by Resolution No. 2012_____ to include the additional Study Areas identified in Section 1.03 of this Contract. As to the additional Study Areas, the City's monetary contribution will be determined as a result of solicitations for professional services and are further subject to Council approving funding. The professional service contracts will be procured and negotiated after the Parties execute this Contract. Upon receipt of the deliverables set out in Section 2.01(c) and (d) and in accordance

with the payment schedules set out in the professional service contracts, the Commission will invoice the City and the City shall pay the City's proportionate share (based on the relative monetary contributions of the Parties) for the deliverables. Both Parties will pay in accordance with the *Prompt Payment Act* of the Texas Government Code, Section 2251.021(b). The City shall receive a copy of the completed Study (ten hard copies and one electronic copy) and any other associated deliverables. Any additional scope or subsequent phases of the Study are not the responsibility of the City, and will be subject to a new or amended Contract as submitted to City Council for approval as needed, except funding that has been previously approved by Council resolution.

3.02 Payment by each party for the performance of governmental functions or services shall be made from current revenues available to the party.

SECTION IV. TERMINATION.

4.01 This Contract will terminate following acceptance by City of the Study as required by Section 3.01.

4.02 This Contract may be terminated at any time by the written agreement of both Parties.

4.03 In the event that either party is in default of its material obligations under this Contract and fails to remedy such default within 60 days after receipt of written notice of default, this Contract may be terminated at the option of the party not in default upon expiration of the 60 day period.

4.04 Termination or cancellation of the Contract will not affect the rights and obligations of the Parties that accrued prior to termination.

SECTION V. GENERAL PROVISIONS.

5.01 This Contract is binding upon and inure to the benefit of the Parties, their respective successors and assigns, including without limitation, any receivers, administrators, or trustees in bankruptcy.

5.02 If any word, phrase, clause, sentence, paragraph, section, or other portion of this Contract is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of the Contract will not be affected by the invalidity and will be construed as if the invalid portion was not contained in the Contract. The provisions of this Contract are expressly deemed severable for this purpose. The Recitals in this Contract are for information purposes only and do not constitute terms of the Contract.

5.03 The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Contract.

5.04 This Contract will not be construed as creating an employer/employee relationship, a partnership, or a joint venture, as to either the Parties or any professional services engaged hereunder. The Commission's services will be those of independent contractor. The Commission understands that the Contract does not grant any rights or privileges established for employees of the City.

5.05 This Contract contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this Contract.

5.06 Any amendment of this Contract must be in writing and signed by the authorized representative of each party to this Contract.

5.07 Unless otherwise expressly stipulated in this Contract, this Contract is separate from and is not an amendment or modification of any other agreement between the parties.

5.08 This Contract is governed by and construed in accordance with the laws of the State of Texas, exclusive of its choice of law provisions.

5.09 Venue for any action arising under this Contract will be in Travis County, Texas.

5.10 Notice provided under this Contract is sufficient if forwarded by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of a party as shown below:

Texas Facilities Commission
1711 San Jacinto Blvd., 4th Floor
Austin, Texas 78701
ATTN: Legal Services
Cc: Steven E. Halpin

Texas Facilities Commission
Planning and Real Estate Management
1711 San Jacinto Blvd., 4th Floor
Austin, Texas 78701
ATTN: Aundre Dukes

City of Austin
City Manager Marc A. Ott
301 W. 2nd Street
Austin, Texas 78702

City of Austin
Law Department
301 W. 2nd Street
Austin, Texas 78702

ATTN: City Attorney

City of Austin
Director of Planning
One Texas Center
505 Barton Springs Road
Austin, Texas 78702
ATTN: Jim Robertson

5.11 This Contract will be effective on the date executed by the authorized representative of the Parties. After execution, the Parties shall proceed with the Work.

5.12 This Contract may be executed in multiple counterparts, all of which shall be considered as one Contract.

SECTION VI. PUBLIC INFORMATION.

6.01 The Parties are committed to compliance with the Texas Public Information Act ("Act"). Should either Party receive a request for information pursuant to the Act seeking information related to the Project, the Parties will cooperate and work together to respond to the request or seek a ruling from the Texas Attorney General when appropriate. A party receiving a request for information relating to the Work, the Plan, the Data Base or any information provided to either party under this Contract will notify the non-receiving party of the request prior to releasing any information. Notice of such request for information will be served in accordance with Section 5.10 of this Contract not later than two business days after receipt of such request for information.

This Contract is accepted and agreed to by the following individuals or officers who are duly authorized to bind the Parties as set forth above.

TEXAS FACILITIES COMMISSION

CITY OF AUSTIN

By: _____
Name: Terry Keel, Executive Director

By: _____
Name: Marc Ott, City Manager

Date: _____, 2012

Date: _____, 2012

Approved as to form:

Approved as to form:

Name: _____

Name: _____

Title: _____

Title: Assistant City Attorney

DRAFT

EXHIBIT A

Introduction

The Commission's strategic facility planning process is comprised of five broad phases including: (1) data collection and understanding; (2) conceptualization; (3) analysis; (4) planning and testing; and (5) implementation. The purpose of this Contract is not to create final site development plans. The intent is to conduct site specific development feasibility analyses to provide a frame of reference and revenue and expenditure forecasts as baseline information. The feasibility analyses include: legal and regulatory analyses, market and competitive analyses, location and site analyses, and financial analyses that as part of the Study and will culminate in a *Development Feasibility and Residual Land Valuation Report*.

The analyses will be conducted with assistance of an interdisciplinary team of professional service providers (the Project Team). The analyses and Study will be completed objectively without bias based on fact, form and best practice. The results of the development feasibility analyses will guide future planning efforts and evaluation of proposals.

Item 4 and 5 above will occur at a later time and are not part of this Study.

Phase One: Data Collection and Understanding

Upon commencement of the Work, the parties shall jointly establish a project schedule, including timelines for delivery and review of key project deliverables. In Phase One, the City will make available and assist the Commission's project team to compile and assemble existing data, studies, and plans (collectively, the "**Data Base**") concerning the Study Areas. The Data Base may include:

1. Land surveys.
2. Facility condition assessments.
3. Inventories and assessments of existing utility and transportation infrastructure,
4. Identification of planned infrastructure and other capital improvements.
5. Land use and development plans.
6. Transportation plans and mobility patterns.
7. Inventory and analysis of existing State and local land use regulatory controls and other adopted plans.
8. Environmental inventory and assessments, including critical environmental features.
9. Emerging projects.

10. Identification of future City infrastructure needs, to the extent known, including transportation, parks and recreation, and storm water management controls in the vicinity of each of the Study Areas.

The Commission's project team and the City will work together to compile the Data Base including a report summarizing the findings of Phase One. The Data Base, along with any other information and factors generated by the Commission's Work, will form the foundation for Phase Two. Milestone deliverables for Phase One of the Work shall consist of the draft and final reports; provided however, draft reports and deliverables are not subject to publication or distribution as provided by Section 552.111, Texas Government Code. The proposed final report is subject to review and comment until such time as the City accepts the report as final.

Phase Two: Development Feasibility Analysis, Asset Valuation, Revenue and Expenditure Forecasting

In Phase Two, the Commission's project team and the City will prepare at least two site specific, development scenarios ("Development Scenario" or collectively, Development Scenarios") for each of the Study Areas indicating the highest and best use and market demand for development of the Study Areas. The Development Scenarios will integrate programmed elements, natural conditions, infrastructure and systems within the sites representing differing market conditions to ensure future development scenarios are achievable yet flexible to evolve with changing conditions and preserve future options. The Development Scenarios will take into account the information gathered in Phase One and other information, analysis, and goals identified by the Commission in the Facilities Master Plan and overall Capitol Area Development Strategy, such as anticipated staffing and space requirements and required capital improvements.

The components of the feasibility analyses and development scenarios will include:

1. Identification and evaluation of opportunities, constraints, and external factors that influence development of the properties including: site evaluations and contextual analyses, traffic impacts analysis, and market research to estimate existing supply, forecast demand and develop an absorption framework of market driven uses;
2. Identification of alternatives and recommendations to address constraints;
3. Comparison of current inventory with future needs to project the gap in space requirements, make reservations for such space and quantify the net development area for each of the tracts;
4. Conceptual site plans identifying natural features and reflecting existing improvements that are expected to remain and prospective improvements;
5. Urban design assessment addressing streets, pedestrian and vehicular circulation, linkage to alternative modes of transportation, parking, open space, building mass and placement;
6. A comparison of the Development Scenarios to the City's Imagine Austin Plan;
7. Development capacity analysis and allocation of square footage that each scenario could produce for interim uses including phasing and sequencing plans;

8. Illustrative development programs of the preferred scenarios including: preliminary site plans, infrastructure demand forecasts of capital improvements needed to support the scenarios, and graphical renderings and physical or computer aided models; and
9. Financial analysis including: identification of sources and uses of funds; project cost estimates; conceptual pro formas evaluating returns on investments, payback periods; and other financial impacts of each scenario to estimate residual land values resulting from development of interim uses, illustrate long-term cash flows, and financial feasibility yielding the highest returns and the lowest risk.
10. Analysis of funding strategies and partnership opportunities for the State and City to address current and future infrastructure needs in the vicinity of the Study Areas.

The development scenarios prepared in Phase Two will allow the Commission to evaluate site-specific opportunities, constraints, and external factors within the Study Areas and to implement the Capitol Area Development Strategy.

Project Reporting and Recommendations:

As the final deliverable the project team will prepare a comprehensive Development Feasibility and Asset Valuation Report including the findings of Phase One and Two. The report will include details of each preferred scenario including: economic impacts, priorities, constraints and opportunities, assumptions, policy recommendations, phasing of capital improvement projects, and tactical funding strategies (action plans) including sources and uses necessary to fund the capital improvements contemplated in the preferred scenarios. The report will include recommended courses of action that can be supported, which provide the framework to shape standards, guidelines, and Development Scenarios for the properties in the Study Areas.

Milestone deliverables for Phase Two of the Work shall consist of the draft Development Scenarios and the draft and final Development Feasibility and Asset Valuation Reports; provided however, draft reports and deliverables are not subject to publication or distribution as provided by Section 552.111, Texas Government Code. The proposed final report is subject to review and comment until such time as the City accepts the report as final.